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Total Number of Pages in This Submission

52

Application Number	09/837,094
Filing Date	April 18, 2001
First Named Inventor	Sheppard, James M. Jr.
Art Unit	1771
Examiner Name	Befumo, Jenna-Leigh

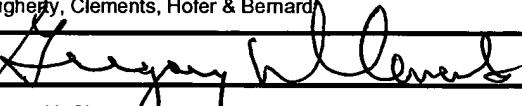
Attorney Docket Number

3129

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Firm Name	Dougherty, Clements, Hofer & Bernard		
Signature			
Printed name	Gregory N. Clements		
Date	December 23, 2004	Reg. No.	30,713

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# FEE TRANSMITTAL For FY 2005

Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT** (\$ ) 250.00

## Complete If Known

Application Number	09/837,094
Filing Date	April 18, 2001
First Named Inventor	Sheppard, James M. Jr.
Examiner Name	Befumo, Jenna-Leigh
Art Unit	1771
Attorney Docket No.	3129

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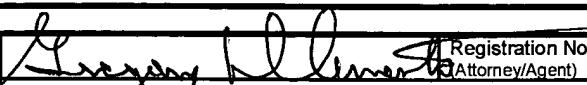
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Utility Filing Fee	790	395	_____
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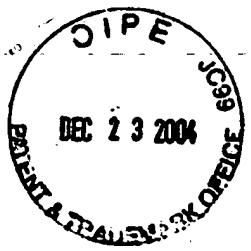
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Signature		Registration No. (Attorney/Agent) 30,713	Telephone 704-366-6642
Name (Print/Type)	Gregory N. Clements		Date December 23, 2004

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Docket: 3129

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IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF  
PATENT APPEALS AND INTERFERENCES

In re Application of:

Sheppard  
Serial No.: 09/837,094  
Filed: April 18, 2001

For: JACQUARD OR DOBBY  
WOVEN TEXTILE WITH  
GRAPHIC IMPRESSION AND  
A METHOD OF MAKING THE  
SAME

Group Art Unit: 1771  
Examiner: Befumo, Jenna-Leigh  
Appeal No.:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

BRIEF OF APPELLANTS

This is an appeal from the final rejection of the Examiner dated August 11, 2004, rejecting Claims 21-27, all claims currently pending in the case. The requisite fee set forth in 37 C.F.R. §1.17(c) accompanies this Brief.

*REAL PARTY IN INTEREST (37 C.F.R. §1.192(c)(1))*

Inventor James M. Sheppard has assigned all his rights and interests in the current invention to Devant Ltd., a North Carolina Corporation. As such, Devant Ltd. is the real party in interest in this case. Mr. Sheppard is the President of Devant Ltd.

*RELATED APPEALS AND INTERFERENCES (37 C.F.R. §1.192(c)(2))*

An appeal has also been filed for related Application Serial No. 09/747,529, entitled JACQUARD WOVEN TEXTILE WITH GRAPHIC IMPRESSION AND A METHOD OF MAKING THE SAME, filed on December 22, 2000. A Notice of Appeal was filed on November 24, 2004. Applicant's Appeal Brief was filed on the same date as this Brief.

*STATUS OF CLAIMS (37 C.F.R. §1.192(c)(3))*

The application was filed on April 18, 2001, and is a continuation-in-part of U.S. Serial No. 09/747,529, which itself claimed priority under 37 C.F.R. § 1.78(a)(4) of U.S. Provisional Application No. 60/173,275 filed on December 28, 1999. This application was originally filed with 20 claims of which two (2) were independent claims (Claims 1, and 16).

The Examiner issued a restriction requirement, and an election was made with traverse to prosecute the invention of claims 1-15. All of the claims 1-15 were rejected in the Examiner's first Office Action of October 4, 2002. In response, the Applicant cancelled claims 1-15 in favor of new claims 21-28. Claim 21 was the only independent claim added.

In the subsequent Office Action of April 22, 2003, which was made final, the Examiner rejected all claims 21-28.

An Amendment After Final Rejection was filed on July 22, 2003.

A Request for continued Examination was filed on September 22, 2003, as well as a Preliminary Amendment, amending independent claim 21, and canceling dependent claim 28.

In the Office Action dated February 18, 2004, the Examiner rejected claims 21-27. A response was filed on May 18, 2004, amending independent claim 21.

In the subsequent Office Action of August 11, 2004, which was made final, the Examiner again rejected all claims 21-27.

The status of the claims is as set out in Examiner's Final Rejection dated August 11, 2004 and is as follows:

Allowed claims—none

Claims objected to—none

Claims rejected—21-27.

#### **STATUS OF AMENDMENTS (37 C.F.R. §1.192(c)(4))**

An amendment responding to the Final Rejection and asking for reconsideration was filed on September 27, 2004. In the Examiner's response dated October 15, 2004, it was stated that this amendment was considered, but was found unpersuasive.

#### ***SUMMARY OF INVENTION (37 C.F.R. §1.192(c)(5))***

In the weaving of terry toweling, three series of yarns are employed: (a) pile warp which produces the loops for the pile surface (b) ground warp from which the pile warp projects and (c) weft which binds the two warps together.

Printing processes on dobby fabrics have been limited to preprinting the warp filaments with an elongated vertical pattern such that when woven, an article with more than two colors can be achieved. This process requires elaborate computer controlled printing onto the filaments, and very precise monitoring of the weaving process. Printing a

pattern post-weave on an article has been employed in dobby situations, but this results in an article that is largely limited to a single color on the nonprinted side of the article. Printing on the reverse side of the dobby article is largely prohibited due to the likelihood that the separately printed images on opposite sides of the article will bleed through the article and disfigure the images on both printed sides. Post printing also has the undesirable side effect of decreasing the absorbency of the towel.

Applicant has recognized the deficiencies of both the weaving process and the traditional printing process and has created the novel “Edge® Towel.” The claimed article employs dobby weaving to create an article with a central light colored area, surrounded by a dark border. The reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the applicant to apply the printed image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color.

#### *ISSUES (37 C.F.R. §1.192(c)(6))*

The Examiner has rejected claims 21-27 under 35 U.S.C. §103(a) as being unpatentable over Hobson (U.S. Pat. No. 4,259,994), in view of Carpenter et al. (U.S. Pat. No. 5,983,952). The Examiner has rejected claims under 35 U.S.C. §103(a) as being unpatentable over Sherrill et al. (U.S. Pat. No. 3,721,273) in view of the Applicant’s admissions. Therefore, the issues to be decided in this appeal are the following:

1. It is the Examiner's position that Hobson discloses a patterned fabric comprising a printed design that can be woven on a dobby loom, with a structure corresponding to that claimed by the Applicant, such that the final product will be blue with gold floral sections on one side, and gold with blue floral sections on the reverse side, with the floral sections being produced by printing on the warp yarns prior to weaving. The Examiner further states that Carpenter et al. disclose attempts to incorporate printed patterns onto woven fabrics to create unique and distinctive appearances. The Examiner claims that it would be obvious to one of ordinary skill in the art to choose various print designs, as well as choose where to place the printed image on the Hobson product to create various printed products that are visually and aesthetically pleasing to consumers.

2. It is the Examiner's position that Sherrill et al. disclose a high sheen terry towel with a printed design on one side. The printed pattern is applied to the cut pile. The Examiner combines this with statements made in the Applicant's specification, and concludes that it would be obvious to one of ordinary skill in the art to use the multicolored woven dobby terry cloth taught in the application as the terry towel in the invention of Sherrill et al., since terry towels made from dobby looms with a different color yarns are well known.

*GROUPING OF CLAIMS (37 C.F.R. §1.192(c)(7))*

As to the rejection applied against claims 21-27 (35 U.S.C. §103(a)), it is the applicant's intention that the rejected claims do not stand or fall together. The applicant considers some claims to have additional patentably distinct features that should be judged on their own merits.

*ARGUMENT (37 C.F.R. §1.192(c)(8))*

Issue 1—The rejection of Claims 21-27 under 35 U.S.C. §103(a) as being unpatentable over Hobson (U.S. Pat. No. 4,259,994) in view of Carpenter et al. (U.S. Pat. No. 5,983,952).

Hobson discloses printing on unwoven side-by-side yarns certain desired patterns in order to make two separate towels. The two towels are side-by-side on the loom. The looms produce a towel with a floral pattern, and a second towel of a second color having the same floral pattern.<sup>1</sup> The color schemes remain the same on the reverse side of each towel<sup>2</sup>, or the reverse side can be ecru or bleached.<sup>3</sup> Hobson teaches away from using a Jacquard loom.

Carpenter et al. disclose applying a printed pattern to jacquard woven fabric. A pattern is printed onto unwoven side-by-side yarns. Registration marks are also printed to synchronize the woven pattern to the printed pattern. Those yarns are then wound on a beam and then the beam is taken to a loom where the textile is woven. Precise control over the tension of the yarns is required to accurately reproduce the image preprinted on the yarns when the yarns are woven into the finished textile article.

The Examiner sets forth many of the features of Hobson and Carpenter et al., and concludes that it would have been obvious to one of ordinary skill in the art to create towels by combining woven patterns with printed patterns as taught in Carpenter, et al. in the fabric of Hobson, which teaches creating towels with differed colored sections combined with printed patterns to create towels with more intricate designs at a lower cost due to the use of print to create a towel that is visually and texturally appealing due to the printed images, colors, and weave structure. This rejection is respectfully traversed for the following reasons.

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<sup>1</sup> U.S. Pat. No. 4,259,994 at col. 3, lines 33-35.

<sup>2</sup> Id. at col. 2, lines 18-25.

<sup>3</sup> Id. at col. 2, lines 48-55.

Claim 21 is the only independent claim. Attached Table 1 sets forth the elements of claim 21 and views this with respect to the rejection of Hobson vs. Carpenter et al. Claim 21 starts by calling for weaving a towel on a dobby loom using at least two different colors. Hobson teaches using tappet or dobby looms in column 2, line 18. Carpenter et al., on the other hand, utilize a jacquard loom as item 26. It is unclear how the Examiner intends to combine these references since Hobson teaches away from using a jacquard loom<sup>4</sup> instead utilizing a dobby loom, and Carpenter teaches using a jacquard loom. These teachings are like oil and water and not meant to be mixed.

Claim 21 calls for a border having a first color that is woven adjacent each edge on one side of the towel. Neither Hobson nor Carpenter has this feature. The Examiner notes that Hobson has a product which can have blue floral “borders” on one side and gold floral “borders” on the opposite side. However, these are not borders. These are merely stripes. A border is something that goes continuously around the entire edge of the product, as clearly set forth in Claim 21. Claim 21 states that the border is adjacent “each edge”. It is clear that the floral stripes of Hobson are only adjacent two edges, but are not adjacent the third and fourth edge of a two-dimensional product. Furthermore, there is no way one skilled in the art can modify Hobson or Carpenter and place a “border” on all edges, without totally ignoring the teachings of these references.

Claim 21 continues by stating that a border having a second color is adjacent each edge of the towel on its other side. Again, neither Hobson nor Carpenter has this for the same reason as set forth above, i.e., Hobson/Carpenter teaches stripes, but not borders adjacent “each edge” of the towel.

Claim 21 continues by stating that the towel has a central area within the borders on both sides of the towel. While there is central area in any two-dimensional product, this central area claimed in claim 21 must be within the borders. The lack of borders by both Hobson/Carpenter makes the location of the central area on the towel unclear to those skilled in the art.

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<sup>4</sup> Id. at col. 2, lines 18 et seq.

Claim 21 continues by stating that the central area on one side is in a first color, while the central area on the other side is in a second color. Neither Hobson nor Carpenter et al. teach that the color on a towel is such that the central area on a first side and the borders on the second side are of one color, while the central area of the second side and the borders of the first side are of a second color. This is how Devant sets up the Jacquard loom to make the Edge® towel. The Examiner mischaracterizes the Hobson reference in this regard. What Hobson teaches is the weaving of two separate towels, as stated above.

Claims 21 continues by stating that the first side is sheared to a height of about 75 to about 95% of the height of side two, and blooming said one side so that a graphic impression can be applied more intensely. Neither Hobson nor Carpenter et al. disclose this.

Lastly, claim 21 calls for forming a graphic impression in the central area on one of the sides. Neither Hobson nor Carpenter form a graphic impression in the central area of a woven product.

By utilizing the color scheme in claim 21, other objects of the invention can be achieved. This article employs dobby weaving to create an article with a central light colored area, surrounded by a dark border. Due to the dobby process and set up, the reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the applicant to apply the printed image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color. This scheme is present in claim 21, and is also further defined in claim 23.

At the bottom of page 4, the Examiner states what is well known in patent law, that matters relating to ornamentation only, which have no mechanical function, cannot be relied upon to patentably distinguish the claimed invention from the prior art. However, the Examiner concludes that the only features of the present invention that deserve patentable weight include, the woven towel having different color yarns which create a first pattern on the first side and an inverse pattern on the reverse side, and a graphic impression. This conclusion only demonstrates that the Examiner has never understood, and still does not understand, the technology of the present invention. As has been repeatedly stated, the dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process, like the Carpenter disclosure. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one.

Attached Table 1 sets forth the elements of claim 21 views these with respect to the rejection of Hobson and Carpenter et al.

Claim 23 is separately patentable due to the further defined color scheme's increased effectiveness at masking bleed through and misalignment of applied images.

Issue 2 — The rejection of claims 21-27 under 35 U.S.C. §103(a) as being unpatentable over Sherrill et al. (U.S. Pat. No. 3,721,273), in view of Applicant's Admissions.

Sherrill et al. disclose a terry towel having one face cotton terry, and the opposite face rayon terry. As can be seen in the drawings of Sherrill, the first side (Fig. 1) has printed thereon patterns creating a window area with a central design, and a border region having additional printed designs thereon. The second side (Fig. 2) is entirely of cotton terry.

The Examiner relies on the Applicant's disclosure to disclose that it is well known in the art to use dobby or cam looms to create thick, luxurious pile fabrics having velour or looped terry structure, that employs two different colors in the linear band. Furthermore, the Examiner relies on Applicant's disclosure to state that it is well known to print designs on the resulting articles.

The Examiner states that Sherrill does not teach using the different colored warp yarns in the terry fabric, but instead cites the Applicant's disclosure that it is well known to create dobby woven products using two different colors in the linear band of the warp filament. The Examiner then concludes that it would be obvious to one of ordinary skill in the art to use the Applicant's multi-colored towel as the terry cloth towel of Sherrill et al. This rejection is respectfully traversed for the following reasons.

Claim 21 is the only independent claim. Attached Table 1 sets forth the elements of claim 21 and views these with respect to the rejection of Sherrill et al. v. Applicant's Admissions. Claim 21 starts by calling for weaving a towel on a dobby loom using at least two different colors. Sherrill makes no disclosure as to the color of the yarns.

Claim 21 calls for a border having a first color that is woven adjacent each edge on one side of the towel. Sherrill et al. appear at first glance to have such a border, however, such is not the case. The Sherrill towel is woven such that the first side is entirely rayon terry, while the second side is entirely cotton terry. Therefore, the border of Sherrill as shown in Figure 1 is defined by a printed pattern (reference number 25). A printed border belies the Applicant's invention, which requires a woven border for proper masking of misaligned and intense graphic printing.

Claim 21 continues by stating that a border having a second color is adjacent each edge of the towel on its other side. Sherrill et al. teach that the reverse side, as seen in Figure 2 of Sherrill et al., is entirely of plain cotton terry. The Sherrill et al. towel is specifically manufactured so that the rayon terry piles are entirely on one side of the towel

and the cotton terry piles are entirely on the other side.<sup>5</sup> Sherrill et al. teach printing on the rayon fibers only, since they have an increased absorption of the dyes, as is well known in the art. The printed pattern would therefore appear only on one side, the rayon side, of the towel. The reverse side of the towel, the cotton side, would not have the alternate color pattern as claimed and required by the Applicant.

Claim 21 continues by stating that the towel has a central area within the borders on both sides of the towel. While there is central area in any two-dimensional product, this central area claimed in claim 21 must be within the borders. Sherrill et al. do teach a central area, but the subsequent printing, not the weaving as required by the Applicant, creates it.

Claim 21 continues by stating that the central area on one side is in a first color, while the central area on the other side is in a second color. The towel of Sherrill et al. discloses a single color rayon first side, and a single color cotton second side, most likely the same color. Sherrill et al. does not teach that the color on a towel is such that the central area on a first side and the borders on the second side are of one color, while the central area of the second side and the borders of the first side are of a second color. This is how Devant sets up the Dobby loom to make the Edge® towel.

Claim 21 continues by stating that the first side is sheared to a height of about 75 to about 95% of the height of side two, and blooming said one side so that a graphic impression can be applied more intensely. Sherrill et al. disclose cutting the rayon fabrics on the first side, but does not disclose the pile height. Sherrill et al. do not disclose any subsequent blooming.

Lastly, claim 21 calls for forming a graphic impression in the central area on one of the sides. Sherrill et al. disclose this feature.

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<sup>5</sup>U.S. Pat. No. 3,721,273, col. 2, lines 52-59.

The Examiner states that it is irrelevant that the Sherrill et al.'s borders are printed onto the towel. This is simply untrue. Sherrill et al. teach a towel woven from a rayon thread and a cotton thread. The towel is specifically manufactured so that the rayon terry piles are on one side of the towel and the cotton terry piles are on the other side. Sherrill et al. teach printing on the rayon fibers only, since they have an increased absorption of the dyes, as is well known in the art. Therefore, the printing would appear only on one side of the towel. The reverse side of the towel would not have the alternate color pattern as claimed and required by the Applicant. Therefore, unlike the present invention, bleed through is a potential problem for Sherrill et al

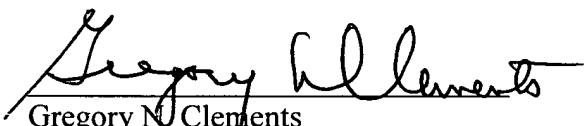
The Examiner states that the final product would be produced whether the border regions were woven into the fabric or printed onto the finished textile. By declaring that it regions were woven into the fabric or printed onto the finished textile. By declaring that it is irrelevant whether the towel's border is woven or dyed, it would seem that the Examiner has either mischaracterized or does not understand the merits of the invention. Printing is known to interfere with the absorption of the towel. The printing dye fills up the nooks and crannies of a fiber and coats it such that it is incapable of absorbing liquids. To print a majority of the surface area, using synthetic non-absorbing rayon makes an aesthetic but useless towel.

By utilizing the color scheme in claim 21, other objects of the invention can be achieved. This article employs dobby weaving to create an article with a central light colored area, surrounding by a dark border. Due to the specific dobby process and set up, the reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the applicant to apply the printed image so as to result in a graphic that is more

intensely colored than woven articles that are limited to a single front and rear color. This scheme is present in claim 21, and is also further defined in claim 23.

Claim 23 is separately patentable due to the further defined color scheme's increased effectiveness at masking bleed through and misalignment of applied images.

Respectfully submitted,



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Attorney Docket 3129

**TABLE 1**

**Claim 21**

Claim 21	Hobson v. Carpenter v. Sherrill
Weaving a towel on a Jacquard loom using at least 2 different colors.	Hobson teaches a Dobby loom, Col. 2, line 18
	Carpenter uses a Jacquard loom, Item 26
	Sherrill does not disclose weaving loom.
Such that a border having a 1 <sup>st</sup> color is woven adj. each edge on one side thereof.	Neither Hobson nor Carpenter has this. Sherrill has a border printed border.
And a border having a second color is woven adj. each edge of said towel on the other side.	Neither Hobson nor Carpenter nor Sherrill has this.
Said towel having a central area woven within the borders on both sides.	There is a central area but no borders. Sherrill has a central area on only one side.
Said central area on other side is woven with 1 <sup>st</sup> color.	There is a central area but no borders.
Said central on said one side is woven in a 2 <sup>nd</sup> color.	There is a central area but no borders. Sherrill's border is same color as central area, and is printed.
Shearing said one side to 75-95% pile height of said second side, and blooming said one side.	Neither Hobson nor Carpenter nor Sherrill has this.
Forming a graphic impression in said central area on said one side.	Neither Hobson nor Carpenter has this. Sherrill discloses this.

Claims 22 – 26 not disclosed by Hobson or Carpenter.	Claim 27 – Hobson mentions shearing (Col. 2, line 33) not blooming. Sherrill discloses this.
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*APPENDIX (37 C.F.R. §1.192(c)(9))*

The claims on appeal appear as follows:

Claims 1 – 20 (Cancelled)

21. A towel (Fig 1, ref# 10) having a graphic impression (Fig 1, ref# 20 & 22), produced by:

weaving a towel on a Dobby loom using at least two different colors of yarn, such that a border (Fig 1, ref# 16) having a first color is woven adjacent each edge of said towel, on one side thereof, and a border having a second color (Fig 1, ref# 24) is woven adjacent of said towel on the other side, said towel having a central area woven within said borders on both said one side and said other side, said central area (Fig 1, ref# 26) on said other side is woven with said first color, said central area (Fig 1, ref# 22) on said one side is woven with said second color,

shearing said one side to a height of about 75 to about 95% of the height of said other side;

blooming said one side such that a graphic impression can be intensely applied thereto;

and forming a graphic impression in said central area on said one side, wherein said towel retains its preprinted water absorbency characteristics.

22. The product of claim 21, wherein said forming is by screen printing, image dyeing, digital imaging, or heat transferring.

23. The product of claim 21, wherein said border on said one side and said central area on said other side having said woven first color is a dark color, whereas said border on said other side and said central area on said one side is a light color.

24. The product of claim 23, wherein said graphic impression has at least two different colors, neither being said first nor said second color.
25. The product of claim 23, wherein said border shape is selected from the class of rectangular shape, circular shape, oval shape, square shape, and irregular shape.
26. The product of claim 25, wherein said border is solid or a pattern.
27. The product of claim 26, wherein said pattern is selected from the class consisting of stripes, dots, names, silhouettes of sport players, animal shapes, corporate logos, or university mascots.
28. (Cancelled)